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HOUSE BILL 88

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Derrick J. Lente

AN ACT

RELATING TO HEMP; AUTHORIZING THE ENVIRONMENTAL IMPROVEMENT BOARD TO REGULATE THE DISTRIBUTION AND SALE OF FINISHED HEMP PRODUCTS; CREATING PENALTIES FOR VIOLATIONS OF REGULATIONS PROMULGATED BY THE ENVIRONMENTAL IMPROVEMENT BOARD; ADDING AND CLARIFYING DEFINITIONS; MAKING TECHNICAL AND CONFORMING CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Hemp Manufacturing Act is enacted to read:

"[NEW MATERIAL] HEMP DISTRIBUTORS AND HEMP RETAILERS-- RULES--REQUIREMENTS.--

A. The department of environment shall enforce the regulations issued pursuant to Subsection C of this section.

B. A hemp distributor and hemp retailer shall not

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1 offer or furnish to another person with or without
2 consideration a hemp product that does not meet the standards
3 established pursuant to Subsection C of this section.

4 C. The environmental improvement board shall
5 promulgate regulations regarding the distribution and sale of
6 hemp finished products in this state, including minimum
7 standards for product safety, product description, THC
8 concentration, storage requirements and recordkeeping."

9 SECTION 2. A new section of the Hemp Manufacturing Act is
10 enacted to read:

11 "[NEW MATERIAL] PENALTIES.--

12 A. A person who violates a regulation adopted by
13 the environmental improvement board pursuant to the Hemp
14 Manufacturing Act is guilty of a petty misdemeanor. This
15 section does not apply to any regulation for which a criminal
16 penalty is otherwise provided by law.

17 B. Whenever, on the basis of any information, the
18 department of environment determines that a person has
19 violated, is violating or threatens to violate any provision of
20 Section 76-24-8 or 76-24-9 NMSA 1978 or any rule, regulation or
21 permit condition adopted and promulgated thereunder, the
22 department may:

23 (1) issue a compliance order stating with
24 reasonable specificity the nature of the violation or
25 threatened violation, requiring compliance immediately or

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1 within a specified time period, or assess a civil penalty for
2 any past or current violation, or both; or

3 (2) commence a civil action in district court
4 for appropriate relief, including a temporary or permanent
5 injunction.

6 C. An order issued pursuant to Subsection B of this
7 section may include suspension or revocation of any permit
8 issued by the department of environment. Any penalty assessed
9 in the order shall not exceed five thousand dollars (\$5,000)
10 for each violation per day. In assessing a penalty, the
11 secretary of environment shall take into account the
12 seriousness of the violation and any good-faith efforts to
13 comply with the applicable requirements.

14 D. An order issued pursuant to this section shall
15 become final unless, no later than thirty days after the order
16 is served, the person named in the order submits a written
17 request to the department of environment for a hearing. Upon
18 request, the secretary of environment shall conduct a hearing.
19 The secretary shall appoint an independent hearing officer to
20 preside over the hearing. The hearing officer shall make and
21 preserve a complete record of the proceedings and forward a
22 recommendation based on the record to the secretary, who shall
23 make the final decision.

24 E. Penalties collected pursuant to violations of
25 rules, regulations or permit conditions shall be deposited in

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1 the general fund for credit to the current school fund."

2 SECTION 3. Section 76-24-4 NMSA 1978 (being Laws 2019,
3 Chapter 116, Section 2) is amended to read:

4 "76-24-4. DEFINITIONS.--As used in the Hemp Manufacturing
5 Act:

6 A. "board" means the board of regents of New Mexico
7 state university;

8 B. "breeder" means a person who conducts research
9 to develop new hemp varieties;

10 C. "Cannabis sativa L." means the plant Cannabis
11 sativa L. and any part of the plant, whether growing or not;

12 D. "hemp" means the plant Cannabis sativa L. and
13 any part of that plant, including seeds and all derivatives,
14 extracts, cannabinoids, isomers, acids, salts and salts of
15 isomers, whether growing or not, with a THC concentration of
16 not more than three-tenths percent on a dry weight basis;

17 ~~[E. "hemp-derived material" means any material~~
18 ~~containing THC in any concentration derived from Cannabis~~
19 ~~sativa L. through any activity authorized pursuant to the Hemp~~
20 ~~Manufacturing Act;~~

21 ~~F.]~~ E. "hemp extract" means oil and extracts
22 derived from [hemp] Cannabis sativa L. containing THC in any
23 concentration through any activity authorized pursuant to the
24 Hemp Manufacturing Act, including cannabidiol, cannabidiolic
25 acid and other identified and non-identified compounds intended

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1 for human ingestion or inhalation;

2 [G.] F. "hemp finished product" means a hemp
3 product that is intended for retail sale for human ingestion or
4 inhalation and containing hemp or hemp extracts [~~that includes~~
5 ~~food, food additives and herbs for human use, including~~
6 ~~consumption~~] that has a THC [~~content~~] concentration of not more
7 than three-tenths percent;

8 G. "hemp distributor" means a person that provides
9 hemp finished products to other business entities;

10 H. "hemp manufacturer" means a person that
11 extracts, processes or engages in other manufacturing
12 activities regarding hemp, including manufacturing
13 [~~intermediate hemp-derived products~~] hemp extract and hemp
14 finished products for human ingestion or inhalation;

15 I. "hemp producer" means a person that cultivates
16 and harvests hemp and includes a person that cultivates hemp
17 plants for transfer to other hemp producers;

18 [~~J. "intermediate hemp-derived product" means oil~~
19 ~~and extracts, including cannabidiol, cannabidiolic acid and~~
20 ~~other identified and non-identified compounds derived from~~
21 ~~hemp;~~]

22 J. "hemp retailer" means a person that provides
23 hemp finished products directly to consumers;

24 K. "manifest" means a form used for identifying the
25 quantity, composition, origin, routing and destination of

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1 [hemp-derived materials] hemp extract during transportation;
2 and

3 L. "THC" means delta-9-tetrahydrocannabinol as
4 measured using a post-decarboxylation method and based on
5 percentage dry weight."

6 SECTION 4. Section 76-24-8 NMSA 1978 (being Laws 2019,
7 Chapter 116, Section 6, as amended) is amended to read:

8 "76-24-8. HEMP MANUFACTURERS--PERMITS--RULES--
9 REQUIREMENTS.--

10 A. The department of environment shall issue
11 permits pursuant to rules issued under Subsection C of this
12 section to extract, process or engage in other manufacturing
13 activities regarding hemp, including manufacturing
14 [~~intermediate hemp-derived products~~] hemp extract and hemp
15 finished products for human ingestion or inhalation.

16 B. A person shall not extract, process or engage in
17 other manufacturing activities regarding hemp, including
18 manufacturing [~~intermediate hemp-derived products~~] hemp extract
19 and hemp finished products for human ingestion or inhalation
20 without a permit issued by the department of environment or a
21 license issued pursuant to Subsection C of Section 76-24-10
22 NMSA 1978.

23 C. The [~~department of environment~~] environmental
24 improvement board shall adopt rules that include:

25 (1) procedures for the issuance, denial,

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1 renewal, suspension and revocation of a permit issued by the
2 department of environment to manufacture hemp products,
3 including permit terms and procedures for appeal of a denial,
4 suspension or revocation that include notice and opportunity
5 for a hearing;

6 (2) qualifications for permitting that include
7 health, sanitation, safety and security;

8 (3) proficiency standards and requirements for
9 storage, recordkeeping and inspections;

10 (4) requiring, and providing a process for,
11 the use or disposal of [~~hemp-derived material~~] hemp extract and
12 hemp finished products containing THC levels of more than
13 three-tenths percent; and

14 (5) fees not to exceed [~~the lesser of one~~
15 ~~thousand dollars (\$1,000) or the cost of administration of a~~
16 ~~permit issued pursuant to this section~~] two thousand dollars
17 (\$2,000).

18 D. A hemp manufacturer that produces [~~intermediate~~
19 ~~hemp-derived products~~] hemp extract or hemp finished products
20 intended for human [~~consumption by eating or drinking~~]
21 ingestion or inhalation are subject to the provisions of the
22 Food Service Sanitation Act and the New Mexico Food Act.

23 E. Hemp finished products produced by a hemp
24 manufacturer holding a permit issued pursuant to this section
25 shall not be deemed adulterated as that term is used in the

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1 Food Service Sanitation Act and the New Mexico Food Act.

2 F. Fees collected pursuant to this section shall be
3 deposited in the environmental health fund.

4 G. A permit issued pursuant to this section does
5 not relieve the holder of the permit of the responsibility to
6 obtain other licenses or permits as required by law."

7 SECTION 5. Section 76-24-9 NMSA 1978 (being Laws 2019,
8 Chapter 116, Section 7) is amended to read:

9 "76-24-9. TRANSPORTING HEMP, [~~AND HEMP-DERIVED MATERIALS~~]
10 HEMP EXTRACT AND HEMP FINISHED PRODUCTS--HARVEST CERTIFICATE--
11 MANIFEST--RULES--REQUIREMENTS.--

12 A. A person shall not transport hemp unless during
13 such transportation the person has in the person's immediate
14 possession a harvest certificate for that hemp provided by the
15 licensed grower.

16 B. A person shall not transport [~~hemp-derived~~
17 ~~materials~~] hemp extract unless during such transportation the
18 person has in the person's immediate possession a manifest
19 issued by a person licensed pursuant to the Hemp Manufacturing
20 Act or other applicable law.

21 C. The department of environment shall establish a
22 manifest system and any other reasonable means necessary to
23 ensure that [~~hemp-derived materials~~] hemp extract originating
24 from a person permitted pursuant to Section [~~6 of the Hemp~~
25 ~~Manufacturing Act are~~] 76-24-8 NMSA 1978 is identifiable during

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1 transport and that the [~~materials are~~] hemp extract is
2 transported only between persons licensed, permitted or
3 otherwise authorized to possess [~~hemp-derived materials~~] hemp
4 extract pursuant to the Hemp Manufacturing Act or other
5 applicable law.

6 D. A person that transports [~~hemp-derived materials~~
7 ~~or food additive hemp finished products intended for human~~
8 ~~consumption by eating or drinking~~] hemp extract or hemp
9 finished products shall be subject to the provisions of the
10 Food Service Sanitation Act and the New Mexico Food Act.

11 E. Transporting hemp without a harvest certificate
12 or [~~hemp-derived material~~] hemp extract without a [~~harvest~~
13 ~~certificate~~] manifest shall constitute a petty misdemeanor,
14 punishable by a fine of up to five hundred dollars (\$500).

15 F. Product in excess of eight ounces that has the
16 appearance of hemp and is in the possession of a person
17 suspected of violating the provisions of Subsection E of this
18 section may be seized by a law enforcement agency until such
19 time as the agency is able to identify the product, in
20 cooperation with the department of environment or the New
21 Mexico department of agriculture, but for no longer than five
22 days.

23 G. As used in this section, "harvest certificate"
24 means a certificate, license, permit or other document issued
25 pursuant to rules adopted under the Hemp Manufacturing Act for

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1 use during transportation of hemp [~~or hemp-derived material~~],
2 whether in the possession of a person or electronically
3 verified by a law enforcement agency."

4 SECTION 6. Section 76-24-10 NMSA 1978 (being Laws 2019,
5 Chapter 116, Section 8) is amended to read:

6 "76-24-10. INDIAN NATIONS, TRIBES AND PUEBLOS--NO STATE
7 REGULATION--COOPERATIVE OR JOINT POWERS AGREEMENTS--RECOGNITION
8 OF TRIBALLY ISSUED LICENSES.--

9 A. The state acknowledges that federally recognized
10 Indian nations, tribes and pueblos located wholly or partially
11 within New Mexico may, pursuant to Section 10113 of the federal
12 Agriculture Improvement Act of 2018, and as a matter of their
13 inherent tribal sovereignty, develop their own plans for the
14 regulation of the production of hemp on their own tribal lands,
15 and that those plans shall be developed in compliance with the
16 federal Agriculture Improvement Act of 2018.

17 B. The New Mexico department of agriculture and the
18 department of environment may enter into cooperative agreements
19 or joint powers agreements with federally recognized Indian
20 nations, tribes and pueblos located wholly or partially within
21 New Mexico that seek the state's assistance in developing hemp
22 production plans that are acceptable to the director of the New
23 Mexico department of agriculture and the department of
24 environment, or in the regulation of hemp production on tribal
25 lands, or in the testing of hemp plants for THC, or the

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1 transportation of hemp or [~~hemp-derived material~~] hemp extract
2 or hemp finished products; provided that no such agreement
3 shall purport to give the state any jurisdiction over any such
4 activities or material on tribal lands.

5 C. A cooperative agreement or joint powers
6 agreement may include provisions recognizing a tribally issued
7 license that authorizes manufacturing on tribal lands,
8 including the extraction, processing or engaging in other
9 manufacturing activities regarding hemp, including
10 manufacturing [~~intermediate hemp-derived products~~] hemp extract
11 and hemp finished products under Section [~~6 of the Hemp~~
12 ~~Manufacturing Act~~] 76-24-8 NMSA 1978."

13 SECTION 7. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2021.